

**STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
300 Capitol Mall, Suite 1700
Sacramento, California 95814**

**File No. RH 394
October 27, 2000**

NOTICE OF EMERGENCY RULEMAKING

SUBJECT: AUTOMOBILE INSURANCE FRAUD PROGRAM

INITIAL STATEMENT OF REASONS

The Insurance Commissioner of the State of California (Commissioner) proposes to amend Subchapter 10, Article 4, Sections 2698.61, 2698.62, 2698.65, 2698.66 and 2698.67 of Title 10, Chapter 5 of the California Code of Regulations (CCR) regarding the program for investigation and prosecution of automobile insurance fraud. The purpose of the proposed adoption is to implement, interpret and make specific the provisions of the California Insurance Code (CIC) sections 1872.8 which requires the Commissioner to assess and distribute funds to California district attorneys for the purpose of prosecuting automobile insurance fraud cases.

DESCRIPTION OF THE PUBLIC PROBLEM

The Insurance Commissioner of the State of California (Commissioner) proposes to amend Subchapter 10, Article 4, Sections 2698.61, 2698.62, 2698.65, 2698.66 and 2698.67 title 10, Chapter 5 of the California Code of Regulations (CCR) regarding the program for investigation and prosecution of automobile insurance fraud. The purpose of the proposed amendment is to implement, interpret and make specific the provisions of the California Insurance Code (CIC) sections 1872.8 which requires the Commissioner to assess and distribute certain funds to California district attorneys for the purpose of prosecuting automobile insurance fraud cases.

AB 1050, Chapter 885, Statutes of 1999, was signed by the Governor on October 9, 1999 creating the Organized Crime Prevention and Victim Protection Act of 1999 (the Act). AB 1050, inter alia, added CIC 1874.8 and 1874.81 as well modifying existing CIC section 1872.8. In adopting AB 1050, the Legislature added to the existing statutory provisions a requirement that the Commissioner conduct a fiscal audit of the grant programs operated by the district attorneys at least once every three years.

The Commissioner has adopted emergency regulations to implement the Organized Automobile Insurance Fraud Interdiction Program as part of the Act. Those regulations provide for a separate but similar grant program. In addition to adding provisions establishing a uniform auditing process, these proposed amendments also conform the existing assessment process to that established for the Organized Automobile Insurance Fraud Interdiction Program and thereby provide a uniform make conforming amendments and improved assessment process.

CIC section 12921 requires the Commissioner to enforce the provisions of the Insurance Code and other laws regulating the business of insurance in the State of California. The proposed adoption is necessary to implement, interpret and make specific the provisions of CIC section 1872.8. The proposed action would specify the level of annual assessment, the procedure by which district attorneys may apply for grant funding, the criteria and process by which the commissioner will review and award grants, the standards for reporting and auditing the grantees use of grant funds and performance under the grant program.

STATEMENT OF SPECIFIC PURPOSE

The specific purpose of each adoption, and the rationale for the determination that each adoption is reasonably necessary to carry out the purpose for which it is proposed, together with a description of the public problem, administrative requirement, or other condition or circumstance that each adoption is intended to address, is as follows:

Section 2698.61 Definitions

Amendments to this section would define and make clear the terms utilized in the grant program and to conform the terms of these regulations with those promulgated to implement CIC section 1874.8 (Title 10, CCR, sections 2698.70 et seq.)

Subsection (b) is amended to add a correct and specific definition of the term “assessment.” Subsection (h) is amended to make more specific the term “district attorney” by adding a reference to Government Code section 26500. Subsection (j) is deleted and replaced with a new subsection (j) which defines the term “insurer” in these regulations by reference to California Insurance Code section 23. Subsection (l) is deleted and replaced by a new subsection (l) which defines and makes “grantee” as used in article. Subsection (n) is added to define the term “vehicle” as having the same meaning as that term is defined in Vehicle Code section 670.

Rational for Necessity: An amendment to subsection (b) is necessary to conform the existing text to that of the enabling statute. Subsection (h) is amended to make certain that the term district attorney does not include any other county office or officer. Subsection (j) was deleted so as to assure no duplication with existing statutory language and regulatory provisions. A new subsection (j) is added to provide a uniform definition of the term “grantee” as used in this article and distinguish it from other terms used in these regulations. Subsection (l) was deleted because it was deemed unnecessary and are placed with the new subsection (l) which make clear and specific that the term “insurer”.

Subsection (n) was added to make clear and specific the meaning of vehicle as used in this article which is otherwise defined differently through other areas of statutory and case law.

Section 2698.62 Annual Fee

Specific Purpose: Existing subsection (a) is deleted and replaced with a new subsection (a) which maintains the existing assessment amount of one-dollar (\$1.00) and provides a clear and specific method for the assessment as set forth in statute. This subsection also provides that insurers may not prorate the assessment either in the amount assessed or the payment.

A subsection (b) is added to establish a methodology for calculating the assessment and a requirement that insurers report, under penalty of perjury, the amount of vehicles subject to assessment.

Subsection (c) makes certain specific exceptions to the assessment methodology.

Subsection (d) is added to establish the legal requirement that assessments not paid within forty-five (45) days of the invoice date will be considered delinquent and will incur a late fee.

Rational for Necessity: CIC Section 1872.8 and existing title 10, CCR, 2698.62, requires insurers doing business in this state to pay an annual assessment of one-dollar for each vehicle insured under an insurance policy it issues in this state in order to fund the Organized Automobile Fraud Interdiction Program. Neither CIC section 1872.8 nor existing regulation specifies an exact method for establishing and collecting of the assessment. The assessment undertaken under the existing regulations have resulted in unintended interpretations being used by some insurers who have used the lack of specificity to prorate the assessment over the calendar year based on the period of time that a vehicle was insured during the calendar year and used various definitions of the term vehicle. This subsection is necessary to make clear and specific that the entire assessment is due on every vehicle regardless of the length of the policy and is submitted as a single payment when assessed. This subsection also specified a uniform method for when the insurers must count the vehicles to be assessed.

Subsection (c) (1) is necessary so as to prevent an interpretation of the regulations which, while allowing for the broadest range of assessment consistent with the enabling statute, would preclude the same insurer being assessed for the same vehicle under the same policy during the same calendar year. Subsection (c)(2) is necessary to preclude an assessment on what would be a duplicate policy on the same vehicle for the same period of time which a primary policy has been issued. Subsection (c)(1) is exempted because they are considered both secondary and pose a rather low risk of they fraudulent activity.

Section 1872.8 does not provide a time period within which the assessment must be paid. This new section establishes a delinquency period and an appropriate sanction for late

payment. CIC 12995 is used by the department in the assessment made in other areas. Subsection (d) is necessary to make specific the time period for submission of assessments and provide sanction for delinquency.

Section 2698.65 County Plan and Criteria for Distribution of Funds to the Grantees

The purpose of the amendments to this section is to make more specific the criteria for the determination and distribution of the grant award. Towards this goal, subsection (3)(A) has been amended to add as a criterion a description of the manner in which it will develop its caseload in coordination with other participating and related entities.

Rational for Necessity:

CIC 1872.8, subsection (b) (1)(D) provides in pertinent part, that the applicant counties shall submit such other relevant data as the Commissioner may require. With this amendment the Commissioner recognizes that the grantee's willingness and ability to coordinate with other law enforcement agencies is an essential component of any effective program directed at the investigation and elimination of automobile insurance fraud.

Section 2698.66 Budget Proposal

Specific Purpose: The amendments to this section delete existing subsection (c) and add in its place a new subsection (c) which provides a uniform guideline for the determination of indirect costs. Subsection (d) has been amended to make specific that the allowable costs for food and beverages can not exceed the costs otherwise allowable under the grantee's per diem schedule. Subsection (f) provides a general requirement that proposed budgets may not be modified once submitted unless the Commissioner has granted prior approval.

Rational for Necessity:

CIC section 1872.8, subsection (b)(1) requires that each applicant for a grant provide a detailed statement of the proposed use of any monies as well as a detailed accounting of the monies received in prior grant periods. This subsection further provides that the Commissioner shall undertake a fiscal audit of the programs at least once every three years.

The existing regulation allowed and resulted in a non-uniform system of budgeting, accounting and reporting. The amendment to subsection (c) will provide a uniform basis for preparing a budget and for reporting which will also facilitate fiscal auditing of the program.

Subsection (d) is necessary to make specific the criteria that the Commissioner deems to be allowable costs for food and beverages.

Finally, subsection (f) is necessary in order establish a procedure for modification of the proposed budget after submission to the Commissioner and to preclude an increase or decrease in grant funding other than by the approval of a grant application.

Section 2698.67 Grant Reporting and Audit and Commissioner's Audit

Specific Purpose: The opening paragraph is amended to delete and unnecessary and non-specific language..

A new Subsection (c) is added which provides a standard for the uniform reporting and auditing of the program fiscal activity. The standard adopted by incorporation is that of the Government Accounting Standards Revised (July 1999). This subsection further establishes a requirement that the grantees cooperate with the Commissioner in the undertaking of any audits and provides sanction for a grantee's refusal to cooperate.

Subsections (c)(d)(e) and (f) are re-lettered to subsections (d)(e)(f) and (g) accordingly.

Rational for Necessity: The use of the phrase "at a minimum" is unnecessary and nonspecific in that it denotes other non-specific requirements may exist. This amendment deletes the existing subsection (c) and replaces it with a new subsection (c) which replaces an more non-specific and non-uniform method of reporting and auditing program costs and replaces it with an established standard auditing methodology and format to be used in performing these audits. This section brings these provisions into conformity wit a similar audit procedure established for similar audits to be performed under the Organized Automobile Insurance Fraud Program (tit.10, CCR, section 2698.70 et seq.) CIC section 1872.8, subsection (b)(1) requires that the Commissioner perform a fiscal audit of the each grantee's program at least once every three years.

IDENTIFICATION OF STUDIES

The Commissioner has not relied upon any technical, theoretical, or empirical study or report, or similar document, proposing the adoption of these regulations. However, the Commissioner has received advice from members of the insurance industry and the California District Attorney's Association regarding certain language. Furthermore, the Commissioner has relied on experience acquired in administering this grant assessment program.

SPECIFIC TECHNOLOGIES OR EQUIPMENT

Adoption of these regulations as proposed would not mandate the use of specific technologies or equipment.

ALTERNATIVES

The Commissioner has considered amending the existing regulations concerning automobile grant programs. However, the legislature has expressed its intent to create a distinct grant program specifically targeted at a specific problem. The similarity of many

of the provisions between the pre-existing auto insurance fraud program and this program would give rise to confusion.

CALIFORNIA DEPARTMENT OF INSURANCE

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